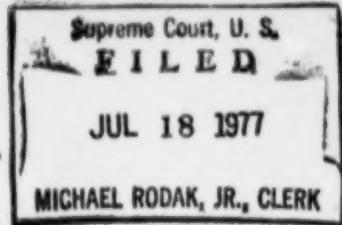


IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976



No. 76-6829

TAYLOR HANCOCK, JR.,

Petitioner,

vs.

STATE OF OHIO,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO
BRIEF FOR RESPONDENT IN OPPOSITION

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

Respondent adds no opinions.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS OF LAW PRESENTED

- I. WHERE EVIDENCE IS SUFFICIENT TO SUPPORT A CONVICTION FOR MURDER WHILE IN THE COURSE OF ROBBERY, IS THAT CONVICTION CONSTITUTIONALLY VOID WHERE A JURY FINDS PETITIONER NOT GUILTY OF A SPECIFICATION INDEPENDENT FROM THAT CONVICTION.
- II. WHETHER A TRIAL COURT CAN LIMIT VOIR DIRE IN CAPITAL CASES WHERE IT IS EVIDENT THAT THE QUESTIONS ASKED ON VOIR DIRE SHOWED THE JURORS TO BE FAIR AND IMPARTIAL.
- III. WHETHER ON THE FACTS OF THIS CASE, THE PHOTOGRAPHIC IDENTIFICATIONS MADE OF PETITIONER WERE SO SUGGESTIVE AS TO CREATE A RISK OF IRREPARABLE MISIDENTIFICATION.
- IV. WHETHER OHIO'S STATUTORY SCHEME FOR IMPOSITION OF THE DEATH PENALTY, AS CONSTRUED BY THE OHIO SUPREME COURT, IS CRUEL AND UNUSUAL IN VIOLATION OF THE CONSTITUTION.

STATUTES

The statutes are properly set forth by petitioner.

STATEMENT OF THE CASE

The petitioner was indicted on two counts of aggravated murder in violation of Ohio Revised Code section 2903.01, on August 7, 1974.

On September 5, 1974, the indictment was amended to include one specification under count one and three specifications under count two.

Testimony at trial showed that on June 7, 1974, in the evening, Rollerland located in Columbus, was holding a record hop skating party. Attendance was estimated at between six hundred to seven hundred persons. Three security guards were employed to control the crowds: Herman Anderson (deceased), Henry Wheatley, and Greg Roddy.

Petitioner and his friend Willie Dumas both testified at trial that they were together that evening and were in the parking lot of Rollerland around 9:30 p.m. Both claimed they were involved in an argument with the decedent Herman Anderson, who ordered them to leave the parking lot area. Anderson used chemical mace to enforce the departure. Defendant-petitioner, because of the mace, removed his shirt and left it in the parking lot. Petitioner claimed they returned to the Dumas home at 1047 Linwood Avenue after the altercation, and were there when the shootings occurred.

Two witnesses testified as to the killing of Herman Anderson. Both positively identified petitioner in court, and also had previously picked out his photograph that police supplied.

Henry Wheatley stated he was working as a guard at the rink, and was close to Anderson when he was killed. He said he was at the building entrance checking admissions when two men came up to

the entrance. One said, "I told you I'd be back" and raised a black object at Anderson. Wheatley said he heard a shot, and saw Anderson fall. Wheatley chased after the men, but failed to capture them.

Wheatley subsequently identified petitioner from a series of photographs.

Karen Lawson, seventeen, was at the rink when the first shooting occurred. She said she had initially seen petitioner about twenty minutes before the shooting. The next time she saw him, he was shirtless, and in front of the entrance. She saw him lift a weapon and shoot, and then place the weapon by his side and run in the direction of Main Street.

She identified him when police brought several photographs to her home. She also positively identified him in court.

There were no eyewitnesses to the murder of taxicab driver, David Martin. Dorothy Evans, a girlfriend of deceased, said she had last seen him earlier that afternoon. He had gone to the university to pick up a paycheck. He was wearing a watch, two rings, (one she had given him) and had a number of credit cards. He also had some money on his person; none of the above was found on him after he was discovered by Cornelius Code about midnight.

Dorothy Evans testified that she had talked to him over the telephone sometime between 11:20 and 11:30 p.m. June 7. The taxicab he was driving was seen on Denton Alley with the lights on and the engine running between 11:20 and midnight. Cornelius Code found him dead inside the cab about midnight.

As is noted subsequently in this brief, laboratory examinations of the bullets used in both shootings showed that the bullets were fired from the same weapon.

The jury returned guilty verdicts on both counts of the indictment, on the specification in count one, and on specifications one

and two in count two. The trial court sentenced appellant to the punishment of death.

The Court of Appeals for Franklin County, in a unanimous decision rendered September 23, 1975, upheld the conviction.

The Ohio Supreme Court in a unanimous decision affirmed:
State v. Hancock (1976), 48 Ohio St. 2d 147.

ARGUMENT

I. WHERE EVIDENCE IS SUFFICIENT TO SUPPORT A CONVICTION FOR MURDER WHILE IN THE COURSE OF ROBBERY, IS THAT CONVICTION CONSTITUTIONALLY VOID WHERE A JURY FINDS PETITIONER NOT GUILTY OF A SPECIFICATION INDEPENDENT FROM THAT CONVICTION.

The question presented is does this court set aside a trial court's verdict of guilty automatically whenever that jury has found petitioner not guilty of one of the specifications.

Petitioner is claiming that this compels reversal because they are inconsistent. The case law has long held to the contrary where the evidence at trial is sufficient to support the guilty verdict.

The Ohio Supreme Court recently decided the identical question in State v. Perryman (1976), 49 Ohio St. 2d 14, the syllabus reading in part:

"Where a jury convicts a defendant of an aggravated murder committed in the course of an aggravated robbery, and where that defendant is concurrently acquitted of a specification indicting him for identical behavior, the general verdict is not invalid."

Petitioner attacks the logic of the above at page 13 of his brief. The Ohio Supreme Court in its opinion at page 26 in Perryman clearly stated that a conviction in and of itself is not dependent on specifications if specifications are considered thereafter, and if a finding of guilty on one specification is determined, then a not guilty on another does not compel total reversal.

Case law has long determined the above: Dunn v. United States (1932), 284 U.S. 390; State v. McNicol (1944) 143 Ohio St. 39; Woodford

ARGUMENT

II. WHETHER A TRIAL COURT CAN LIMIT VOIR DIRE IN CAPITAL CASES WHERE IT IS EVIDENT THAT THE QUESTIONS ASKED ON VOIR DIRE SHOWED THE JURORS TO BE FAIR AND IMPARTIAL.

Petitioner is claiming here that (1) the State of Ohio's law regarding voir dire in capital cases is one of confusion, and (2) that because the trial court did not allow questions regarding the death penalty in his case, his "constitutional fair trial rights" were violated.

Petitioner cites a case, State v. Lane (1976), 49 Ohio St. 2d 77 whence the same question was presented. In upholding that method of voir dire the Lane opinion stresses that automatic reversal does not follow where the trial court chooses to follow voir dire in the manner in question.

The Lane opinion at page 80 notes that the opinions of the jurors remain unknown, but that a "trial court's general instruction during voir dire may be an adequate substitute for individualized inquiry . . . "

The Bayless decision, which petitioner claims is opposed to Lane is specifically mentioned in the Lane decision (at page 79).

ARGUMENT

III. WHETHER ON THE FACTS OF THIS CASE, THE PHOTOGRAPHIC IDENTIFICATIONS MADE OF PETITIONER WERE SO SUGGESTIVE AS TO CREATE A RISK OF IRREPARABLE MISIDENTIFICATION.

Petitioner states that the facts of this case clearly show that the photographic identifications made of petitioner were so impermissibly suggestive as to create a substantial risk of irreparable misidentification.

The Ohio Supreme Court, the Court of Appeals, and the trial court all found to the contrary - basing their decision on Simmons v. United States (1968), 390 U.S. 377 which case at 384 notes that

each case has to be considered on its own facts.

The opinion of Hancock at pages 150-51 in the Ohio Supreme Court states:

"In this case, appellant was identified at trial by two witnesses: Wheatley and Lawson. Examination of the trial transcript disclosed that both of these in-court identifications withstood vigorous cross-examination by counsel for appellant.

"Witness Wheatley testified that the lighting was bright at the time of the Anderson shooting. He, himself, was only 'about one good step' from precisely where the crime occurred; his face was burned by the blast and he felt the smoke from the gun.

"Witness Lawson obtained only a brief view of the assailant at the time of the shooting. However, she testified as to the assailant's walking in front of the skating rink, as to his pointing a gun and as to his shooting the decedent; she added that there were lights burning in that area.

"We conclude from the record at bar that the pretrial photographic identification procedure employed in this case was not so impermissibly suggestive as to give rise to a 'very substantial likelihood of irreparable misidentification' at the trial. Simmons v. United States, supra."

ARGUMENT

IV. WHETHER OHIO'S STATUTORY SCHEME FOR IMPOSITION OF THE DEATH PENALTY, AS CONSTRUED BY THE OHIO SUPREME COURT, IS CRUEL AND UNUSUAL IN VIOLATION OF THE CONSTITUTION.

In the decision the Ohio Supreme Court rendered in the present case, it states at page 152:

"Appellant's final argument is that the imposition of capital punishment constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. In view of this court's decision in State v. Bayless (1976), 48 Ohio St. 2d 73, this proposition is not well taken."

The Bayless decision (pages 79-87) covers at length the arguments presented by petitioner in this case. Respondent sets forth

those arguments in their entirety:

"Stern, J. In five separate cases, decided on July 2, 1976, the United States Supreme Court held that the death penalty was not unconstitutional per se as cruel and unusual punishment. Gregg v. Georgia (1976), ____ U.S. ___, 49 L. Ed. 2d 859; Proffitt v. Florida (1976), ____ U.S. ___, 49 L. Ed. 2d 913; Jurek v. Texas (1976), ____ U.S. ___, 49 L. Ed. 2d 929; Woodson v. North Carolina (1976), ____ U.S. ___, 49 L. Ed. 2d 944; Roberts v. Louisiana (1976), ____ U.S. ___, 49 L. Ed. 2d 974. The Court upheld the imposition of the death penalty under statutes in Georgia, Florida, and Texas, while striking down death penalty statutes in Louisiana and North Carolina. We are now presented with the question of whether the Ohio statutes imposing the death penalty are constitutional in light of those decision.

"Following the decision in Furman v. Georgia (1972), 408 U.S. 238, Ohio adopted R.C. 2929.02 which prescribes the death penalty or life imprisonment for the crime of aggravated murder. The procedure for determining whether the death sentence is to be imposed is set out in R.C. 2929.03 and 2929.04. Those statutes permit the death penalty only where one or more aggravating factors is specified in the indictment and proved beyond a reasonable doubt. The aggravating circumstances include: assassination of the President, Vice-President, Governor, Lieutenant Governor, or a person who has been elected to or is a candidate for any such office; murder for hire; murder to escape accountability for another crime; murder by a prisoner; repeat murder or mass murder; killing a law enforcement officer; and murder in the course of certain felonies.

"The trier of fact may be either a jury or, if waived, a three-judge panel; it is to consider first whether the defendant is guilty of the charge, and if found guilty, whether he is also guilty of one or more of the specifications. If the defendant is found guilty of the charge and innocent of the specifications, a sentence of life imprisonment is imposed, and possibly a fine. If the defendant is found guilty of the charge and guilty of one or more of the specifications, a separate hearing is held before the trial judge or the three-judge panel to determine whether mitigating circumstances exist which preclude imposition of the death penalty. A

presentence investigation and a psychiatric examination of the defendant are required to be made before the hearing, and other evidence and testimony may be submitted, including any statement by the defendant. The death penalty is to be imposed if the trial judge or the three-judge panel unanimously finds that none of three possible mitigating factors has been established to exist by a preponderance of the evidence.

"The mitigating factors are that:

- (1) The victim of the offense induced or facilitated it;
- (2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation; and
- (3) The offense was primarily the product of the offender's psychosis or mental deficiency, although such condition is insufficient to establish the defense of insanity.

"Essentially, it may be seen that the Ohio statutes provide for a bifurcated trial, in which the issues of guilt, of the charge and of certain statutorily defined aggravating factors, are determined by the jury or, if waived, by a three-judge panel, and issues of mitigation are determined by the trial judge or by the three-judge panel. If the sentence of death is affirmed by a Court of Appeals, a further appeal as a matter of right may be taken to this court. Section 2(B)(2)(a)(ii), Article IV of the Ohio Constitution.

"This statutory scheme differs somewhat from any of those considered by the United States Supreme Court in its July 2, 1976, decisions, but it is basically similar to the Georgia, Florida, and Texas statutes which the court found to be constitutional. Each of those statutes provide for a bifurcated trial, with a separate sentencing hearing to consider information relevant to the imposition of sentence, under standards to guide the sentencing authority in the use of that information. The statutes in North Carolina and Louisiana which were struck down imposed mandatory death sentences, with no 'particularized consideration of relevant aspects of the character and record of each convicted defendant before the imposition upon him of the sentence of death.'

Woodson v. North Carolina, supra (49 L.

Ed. 2d 944), at page 960. The court did not, however, establish specific standards for imposition of the death penalty, but rather considered each state's statutory procedures to determine whether the concerns expressed by the court in Furman v. Georgia, supra, that the death penalty not be imposed capriciously or in a freakish manner, had been allayed.

"The court expressed the principle underlying its five separate decisions in these words:

'In summary, the concerns expressed in Furman that the penalty of death not be imposed in an arbitrary or capricious manner can be met by a carefully drafted statute that ensures that the sentencing authority is given adequate information and guidance. As a general proposition these concerns are best met by a system that provides for a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.

'We do not intend to suggest that only the above-described procedures would be permissible under Furman or that any sentencing system construed along these general lines would inevitably satisfy the concerns of Furman, for each distinct system must be examined on an individual basis. Rather, we have embarked upon this general exposition to make clear that it is possible to construct capital-sentencing systems capable of meeting Furman's constitutional concerns.'

Gregg v Georgia, supra (49 L Ed. 2d 859), at page 887 (footnotes omitted).

"It cannot be claimed that punishment by death in Ohio is excessive because it is grossly disproportional to the severity of the crime, for death is imposed only in cases of purposeful murder, and only when one or more specific aggravating factors

are also present. Nor can it be fairly charged that Ohio's statutes are likely to result in capricious, arbitrary, and discriminatory death sentences. More clearly than any of the states whose statutes were reviewed by the high court, Ohio has attempted to insulate the determination of guilt and of sentence from any likelihood of jury arbitrariness. The jury is directed to determine only guilt or innocence and whether the defendant is guilty beyond a reasonable doubt of one or more aggravating factors specified in the indictment. The ambit of their responsibility is thus virtually the same as in any other criminal trial. The possibility does exist, of course, that jurors might disregard their oaths and vote upon the aggravating specifications according to whether they believe the defendant deserves the death penalty, but that possibility does not seem a substantial one. The jury instructions are not to mention the penalty which might be a consequence of the jury's verdict on the charge and the specifications, thus emphasizing the role of the jury in determining only facts not punishment, and the specifications themselves require only simple factual determinations, such as whether the victim was a high public official or a law enforcement officer and whether the offense was committed for hire, to escape detection or punishment, or in connection with certain other offenses such as kidnapping, aggravated robbery, or rape. The likelihood that prejudice, emnity, bias or sympathy would significantly affect the jury's findings of fact on such issues appears slight. Further, the explicit nature of the specifications allows effective judicial review of whether the jury's verdict was supported by the evidence.

"Gregg v. Georgia specifically decided that the concerns expressed in Furman v. Georgia are adequately met and, as a general proposition, best met by a 'system that provides a bifurcated proceeding at which the sentencing authority is apprised of the information relevant to the imposition of sentence and provided with standards to guide its use of the information.' Gregg v. Georgia, supra, at page 887. Ohio conforms to this description quite closely. Sentence is determined at a separate hearing, and only after the pre-sentence investigation and a psychiatric examination. Testimony and other evidence may also be submitted

at this hearing. On the basis of this information, and considering the nature and circumstances of the offense and the history, character and condition of the offender, the trial judge or the three-judge panel are then to determine whether one or more of the three statutory mitigating factors have been proved by a preponderance of the evidence. The mitigating factors, as with any legislation, may require judicial interpretation and clarification, but they are basically reasonable and similar to those approved in Proffitt v. Florida, supra (49 L. Ed. 2d 913), and they do clearly guide the sentencing judge or judges in their decision. In addition, this court has a particular opportunity and responsibility to assure that death sentences, which may be brought to this court for review as a matter of right, are not imposed arbitrarily and capriciously. We have in this case, and will in all capital cases, independently review the aggravating and mitigating circumstances presented by the facts of each case to assure ourselves that capital sentences are fairly imposed by Ohio's trial judges.

"The General Assembly might properly have included other mitigating circumstances (see Proffitt v. Florida, supra, at page 921), or declined to list specific mitigating circumstances (see Gregg v. Georgia, supra, at page 870), but we conclude that those which are listed do direct inquiry both to the circumstances of the crime and to the individual culpability of the defendant, and so adequately guide the decision of the sentencing authority. It is a delicate legislative task to provide standards which are not arbitrary, yet which allow meaningful consideration of the defendant and his crime, and it is an essential judicial task to assure that those standards be strictly construed in favor of the defendant, to allow the broadest consideration of mitigating circumstances consistent with their language. We perceive no distinction of Constitutional dimensions between Ohio's mitigating factors, so construed, and those upheld in Proffitt v. Florida, supra.

"The only claim of mitigation raised in this case was that the defendant was 'mentally deficient.' The application of that standard to this defendant is discussed infra. Insofar as this case raises the question of whether that standard for miti-

gation is too narrow, we are unable to find that the decision of the General Assembly to allow mitigation of sentence for those who are mentally deficient, but not of other mental disorders not constituting psychosis or amounting to insanity, falls outside the proper scope of its authority to assign responsibility and punishment for criminal offenses.

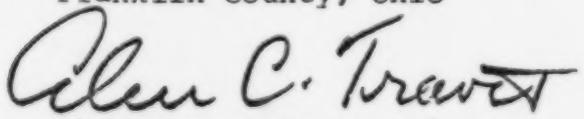
"In Gregg v. Georgia, supra, at page 888, the court also considered other attacks upon the imposition of the death penalty, including attacks upon the existence of discretion at the prosecution, the conviction, and the executive clemency stages of the criminal justice system. The court found such matters not to be constitutionally determinative, and they need not be considered here. Under the court's decisions in Gregg v. Georgia et al., Ohio's statutory framework for the imposition of capital punishment is constitutional and does not impose cruel and unusual punishment within the meaning of the Eighth Amendment. The defendant's eleventh and twelfth propositions of law are overruled."

CONCLUSION

It is, therefore, submitted that the within cause presents no question which warrants further review by this Court and that the petition for a writ of Certiorari should be denied.

Respectfully submitted,

George C. Smith
Prosecuting Attorney
Franklin County, Ohio

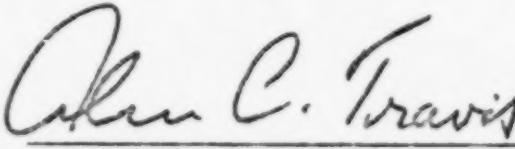


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CERTIFICATE OF SERVICE

I, Alan C. Travis, counsel for Respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 15th day of July, 1977, I served three copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari, by mailing a copy in a duly addressed envelope, with first class postage prepaid to Mr. C. William Lutz, 400 South Front Street, Columbus, Ohio 43215. I further certify that all parties required to be served have been served.


Alan C. Travis
Alan C. Travis
Counsel for Respondent

OHIO REVISED CODE, SECTION 2903.01

(A) No person shall purposely, and with prior calculation and design, cause the death of another.

(B) No person shall purposely cause the death of another while committing or attempting to commit, or while fleeing immediatley after committing or attempting to commit kidnapping, rape, aggravated arson or arson, aggravated robbery or robbery, aggravated burglary or burglary, or escape.

(C) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

OHIO REVISED CODE, SECTION 2929.02

(A) Whoever is convicted of aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.03 and 2929.04 of the Revised Code. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B) Whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life. In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine in addition to imprisonment or death for aggravated murder, or in addition to imprisonment for murder, unless the offense was committed with purpose to establish, maintain, or facilitate an activity of, a criminal syndicate as defined in section 2923.04 of the Revised Code, or was committed for hire or for purpose of gain.

(D) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the

extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to himself or his dependents, or will prevent him from making reparation for the victim's wrongful death.

OHIO REVISED CODE, SECTION 2929.03

(A) If the indictment or count in the indictment charging aggravated murder contains no specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge, the trial court shall impose sentence of life imprisonment on the offender.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard, which shall include an instruction that a specification must be proved beyond a reasonable doubt in order to support a guilty verdict on such specification, but such instruction shall not mention the penalty which maybe the consequence of a guilty or not guilty verdict on any charge or specification.

(C) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the

specifications, the trial court shall impose sentence of life imprisonment on the offender. If the indictment contains one or more specifications listed in division (A) of such section, then, following a verdict of guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be determined:

(1) By the panel of three judges which tried the offender upon his waiver of the right to trial by jury;

(2) By the trial judge, if the offender was tried by jury.

(D) When death may be imposed as a penalty for aggravated murder, the court shall require a pre-sentence investigation and a psychiatric examination to be made, and reports submitted to the court, pursuant to section 2947.06 of the Revised Code. Copies of the reports shall be furnished to the prosecutor and to the offender or his counsel. The court shall hear testimony and other evidence, the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, relevant to the penalty which should be imposed on the offender. If the offender chooses to make a statement, he is subject to cross-examination only if he consents to make such statement under oath or affirmation.

(E) Upon consideration of the reports, testimony, other evidence, statement of the offender, and arguments of counsel, submitted to the court pursuant to division (D) of this section, if the court finds, or if the panel of three judges unanimously finds that none of the mitigating circumstances listed in division (B) of section 2929.04 of the Revised Code is established by a preponderance of the evidence, it shall impose sentence of death on the offender. Otherwise, it shall impose sentence of life imprisonment on the offender.

OHIO REVISED CODE, SECTION 2929.04

(A) Imposition of the death penalty for aggravated murder is precluded, unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code, and is proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or person in line of succession to the presidency, or of the governor or lieutenant governor of this state, or of the president-elect or vice president-elect of the United States, or of the governor-elect or lieutenant governor-elect of this state, or of a candidate for any of the foregoing offices. For purposes of this division, a person is a candidate if he has been nominated for election according to law, or if he has filed a petition or petitions according to law to have his name placed on the ballot in a primary or general election, or if he campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was a prisoner in a detention facility as defined in section 2921.01 of the Revised Code.

(5) The Offender has previously been convicted of an offense of which the gist was the purposeful killing of or attempt to kill another, committed prior to the offense at bar, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer whom the offender knew to be such, and either the victim was engaged in his duties at the time of the offense, or it was the offender's specific purpose to kill a law

enforcement officer..

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary.

(B) Regardless of whether one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment and proved beyond a reasonable doubt, the death penalty for aggravated murder is precluded when, considering the nature and circumstances of the offense and the history, character, and condition of the offender, one or more of the following is established by a preponderance of the evidence:

(1) The victim of the offense induced or facilitated it.

(2) It is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation.

(3) The offense was primarily the product of the offender's psychosis or mental deficiency, though such condition is insufficient to establish the defense of insanity.

OHIO CONSTITUTION

ARTICLE IV, SECTION 2

(A) The supreme court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the supreme court shall be necessary to constitute a quorum or to render a judgment.

(B) (1) The supreme court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

- (i) Cases originating in the courts of appeals;
- (ii) Cases in which the death penalty has been affirmed;
- (iii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained.

(c) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(d) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(e) The supreme court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the supreme court shall be reported, together with the reasons therefor.

UNITED STATES CONSTITUTION

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person with its jurisdiction the equal protection of the laws.